

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 56

RICHARD P. LAWSON, AS DEPUTY COMMISSIONER,
SIXTH COMPENSATION DISTRICT, UNITED STATES
EMPLOYEES' COMPENSATION COMMISSION, PETI-
TIONER

VS.

SUWANNEE FRUIT & STEAMSHIP COMPANY, A COR-
PORATION, AND FIDELITY & CASUALTY COMPANY
OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 14, 1948
CERTIORARI GRANTED JUNE 21, 1948

INDEX

	Page
Complaint	2
Motion to Dismiss	7
Order denying Motion to Dismiss	8
Opinion of U. S. District Court, Southern District of Florida, filed October 11, 1946	8
Motion for Final Judgment	13
Final Judgment	13
Notice of Appeal	15
Statement of Points to be urged on Appeal	16
Designation of Contents of Record on Appeal	17
Certificate of Clerk	19
Proceedings in U. S. C. C. A., Fifth Circuit	20
Minute entry of argument and submission	20
Opinion, McCord, J.	21
Judgment	24
Clerk's certificate	25
Order allowing certiorari	26

1
In The United States
Circuit Court of Appeals
Fifth Circuit

No. 11,928

RICHARD P. LAWSON, as Deputy Commissioner, Sixth
Compensation District, United States Employees' Compens-
ation Commission,

Appellant,

vs.

SUWANNEE FRUIT & STEAMSHIP COMPANY, a cor-
poration, and FIDELITY & CASUALTY COMPANY OF
NEW YORK, a corporation,

Appellees

TRANSCRIPT OF RECORD ON APPEAL

Herbert S. Phillips, U. S. Attorney, and
Edith House, Asst. U. S. Attorney
U. S. Court House & Post Office Building
Jacksonville, Florida

Attorneys for Appellant

Harry T. Gray
Marks, Marks, Holt, Gray & Yates
1321 Graham Building
Jacksonville, Florida

Attorneys for Appellees

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 954-J-CIV

COMPLAINT UNDER LONG-
SHOREMEN'S AND HARBOR
WORKERS' COMPENSATION
ACT.

F I L E D

Feb 27 1946

JACKSONVILLE, FLA.

Edwin R. Williams, Clerk.

SUWANEE FRUIT & STEAMSHIP
COMPANY, a corporation, and FIDELITY
& CASUALTY COMPANY OF NEW
YORK, a corporation,

Plaintiffs,

vs.

RICHARD P. LAWSON, as Deputy Com-
missioner, Sixth Compensation District,
United States Employees' Compensation
Commission,

Defendant.

Suwannee Fruit & Steamship Company, a corporation, hereinafter called the steamship company, and Fidelity & Casualty Company of New York, a corporation, hereinafter called the carrier, bring this cause for review of a compensation award under the Longshoremen's and Harbor Workers' Compensation Act (33 U. S. C. A., Navigation and Navigable Waters, Sec. 901, et seq) against Richard P. Lawson, as Deputy Commissioner, Sixth Compensation District, United States Employees' Compensation Commission:

1. The steamship company at all times hereinafter men-

tioned was the employer of John Davis, who, by an award of the Deputy Commissioner dated the 14th day of May, 1945 and affirmed by this Court in the case of Suwanee Fruit & Steamship Company and Fidelity & Casualty Company of New York vs. Richard P. Lawson, as Deputy Commissioner, etc., in admiralty, No. 51-J, was held and found to have sustained an injury by accident arising out of and in the course of his employment which resulted in the permanent loss of vision of the left eye of more than 80%, the carrier having been found and held by said award and by said order of affirmance to be the insurer of the employer for said accident and injury, and in and by said award it was further provided:

"And it is ordered by the Deputy Commissioner that this case be held open in order that evidences might be received and a determination made as to whether or not this claimant (John Davis) is entitled to receive compensation for permanent total disability or for permanent partial disability in addition to that awarded herein."

2. Thereafter, and on, to-wit, the 31st day of January, 1946, the Deputy Commissioner entered a supplementary award of compensation, a copy of which is hereto attached and a made a part hereof as Exhibit A.

3. This proceeding is for the purpose of reviewing said last named order, as provided by the Longshoremen's and Harbor Workers' Compensation Act above referred to, and particularly by Sec. 921 thereof.

4. The compensation benefits directed to be paid by the original award are being paid to the employee, John Davis, and will continue to be paid until said order has been fully complied with.

5. At the time the said employee, John Davis, sustained the injury by accident to his left eye he had already lost the sight of his right eye and was industrially blind in said eye

at said time, said blindness not having been caused by an injury by accident arising out of and in the course of his employment and compensable under the Longshoremen's and Harbor Workers' Compensation Act above referred to or any other compensation act; and no compensation benefits were or have been paid to the said employee on account of the loss of vision in his said right eye.

6. The loss of vision in the right eye was not contributed to, caused or aggravated or accelerated in any way by any accident by injury arising out of and in the course of the employment of the said employee with this employer, and the injury by accident for which compensation benefits were awarded to the left eye did not in any wise directly or indirectly affect the vision of the right eye.

7. The award of the Deputy Commissioner is not in accordance with law, in that the loss of sight in the right eye was not due to injury by accident arising out of and in the course of his employment with this employer and cannot be the basis for a compensation award against this employer; and this employer, under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, is only liable for compensation benefits to the said employee arising from the injury by accident sustained while its employee, to-wit, the loss of vision in the left eye.

WHEREFORE plaintiffs pray that process in due form of law issue against the defendant and that they may have such relief as they are entitled to under the provisions of the Longshoremen's and Harbor Workers' Compensation Act above referred to, and that said award attached as Exhibit A be vacated, modified and set aside insofar as it awards benefits in conflict with the provisions of said act.

/s/ Harry T. Gray

Marks, Marks, Holt, Gray & Yates

Attorneys for Plaintiffs.

UNITED STATES EMPLOYEES' COMPENSATION
COMMISSION SIXTH COMPENSATION
DISTRICT

SUPPLEMENTARY
COMPENSATION ORDER
AWARD OF COMPENSATION

CASE NO. 518-16

In the matter of the claim for compensation
under the Longshoremen's and Harbor
Workers' Compensation Act

JOHN DAVIS, *Claimant*
against

SUWANNEE FRUIT & STEAMSHIP
COMPANY, Employer

THE FIDELITY AND CASUALTY
COMPANY OF NEW YORK
Insurance Carrier

An order in this case was filed in the office of the Deputy Commissioner on May 14, 1945. Said order awarded to the claimant herein compensation for the loss of use of his left eye and provided that a later determination be made with respect to possible permanent total disability.

The case having been reviewed and further consideration having been given to the evidence in the record and no further hearing having been held or applied for by any interested party or considered necessary by the Deputy Commissioner, the Deputy Commissioner makes the following additional

FINDINGS OF FACT

That since October 2, 1942, the claimant herein has been unable to perform any remunerative work and has only for

an occasional short period been able to do odd jobs of trifling character; that the claimant has been unable to compete in the open labor market because of his disability; that although he was blind in his right eye, the claimant had a definite earning capacity prior to and at the time of the injury of September 30, 1942, and that such earning capacity has been permanently destroyed by the injury of September 30, 1942; that the disability resulting from the injury of September 30, 1942 (i. e., the loss of use of the left eye) combined with the pre-existing disability (i. e., the loss of use of the right eye) has caused the claimant herein to be permanently and totally disabled; that the claimant, John Davis, is entitled to receive compensation during the continuance of such permanent total disability at the rate of Eight Dollars (\$8.00) per week; that no part of such compensation is payable out of the Special fund established under the provisions of Section 44 of the Longshoremen's and Harbor Workers' Compensation Act; but that the employer, Suwannee Fruit and Steamship Company, and the insurance carrier, the Fidelity and Casualty Company of New York, are liable for the payment of such compensation for permanent total disability; that the employer has been paying compensation to the claimant as provided in the order of May 14, 1945.

Upon the foregoing facts and those found in the order of May 14, 1945, it is ordered by the Deputy Commissioner that the award made in such order of May 14, 1945, be modified in accordance with the following:

AWARD

The employer, Suwannee Fruit and Steamship Company and the insurance carrier, the Fidelity and Casualty Company of New York, shall pay to the claimant, John Davis of 1302 Wilcox Avenue, Jacksonville, Florida, compensation as follows: 174 weeks from October 2, 1942 to January 31, 1946, inclusive, at Eight Dollars (\$8.00) per week or a total of One Thousand Three Hundred Ninety-Two Dollars (\$1,392.-

00) and Eight Dollars (\$8.00) per week thereafter during the continuance of total disability.

Given under my hand at Jacksonville, Florida,
this 31st day of January, 1946.

(s) RICHARD P. LAWSON

Richard P. Lawson, Deputy Commissioner
Sixth Compensation District

(CAPTION OMITTED)

FILED

Apr 26 1946

JACKSONVILLE, FLA.

Edwin R. Williams, Clerk.

MOTION TO DISMISS

The defendant moves the Court to dismiss the action because the complaint fails to state a claim upon which relief can be granted.

/s/ HERBERT S. PHILLIPS

Herbert S. Phillips
United States Attorney

/s/ EDITH HOUSE

Edith House
Asst. United States Attorney
Attorneys for Defendant.

(CAPTION OMITTED)

FILED

Oct 11 1946

JACKSONVILLE, FLA.

Edwin R. Williams, Clerk.

O R D E R

All affected parties having been heard, after due notice, upon the matters hereinafter mentioned, it is upon consideration thereof:

ORDERED AND ADJUDGED:

1. Defendant's motion (filed April 26, 1946) to dismiss the action because the complaint fails to state a claim for relief against the defendant, is denied, the Court being of the opinion that although the employee is entitled to compensation for permanent total disability, the plaintiffs are liable only for permanent partial disability, as provided by 33 U. S. C. A. 908, and the remainder of such compensation should be paid from the special fund created by 33 U. S. C. A. 944.

DONE AND ORDERED at Jacksonville, Florida, October 11, 1946.

/s/ LOUIE W. STRUM,

Louie W. Strum
U. S. District Judge.

Copies—

Marks, Marks, Holt, GRAY & Yates,
District Attorney (Miss House)

(CAPTION OMITTED)

OPINION OF COURT

FILED OCTOBER 11, 1946.

F I L E D

Oct 11 1946

JACKSONVILLE, FLA.

Edwin R. Williams, Clerk.

Suit by Suwannee Fruit & Steamship Company and Fidelity & Casualty Company of New York, Insurance Car-

rier, against Richard P. Lawson, Deputy Commissioner, to modify or restrain compensation award to John Davis, under Longshoremen's & Harbor Workers' Compensation Act, 33 U. S. C. A. 908.

On motion to dismiss.

Motion denied.

Marks, Marks, Holt, Gray & Yates, Jacksonville, Florida, for plaintiffs.

Herbert S. Phillips, District Attorney, Tampa Florida, and Edith House, Assistant District Attorney, Jacksonville, Florida, for defendant.

STRUM, District Judge:

While in the employ of Suwannee Fruit & Steamship Company, John Davis suffered the accidental loss of his *LEFT* eye under circumstances entitling him to compensation under the Longshoremen's & Harbor Workers' Compensation Act, 33 U. S. C. A. 908. An award was made by the Deputy Commissioner, affirmed by this Court, awarding said employee compensation for permanent partial disability under sec. 8 (f) of the Act, which award is now being paid in due course by said employer.

Prior to entering the employ of Suwannee, the employee had lost the sight of his *RIGHT* eye in circumstances not entitling him to compensation for that eye, and no compensation benefits have heretofore been paid him for the loss of the right eye. The Deputy Commissioner has now made an award for permanent total disability based upon the combined effect of the two injuries, which award the employer seeks to restrain as unauthorized.

As the employee is now industrially blind in both eyes, he

is, under the Act, entitled to compensation for total permanent disability. The sole and narrow question here is whether the present employer, Suwannee, is liable for *TOTAL* permanent disability, or whether said employer is liable only for the maximum compensation for *PARTIAL* permanent disability, the remainder to be paid out of the special fund created by sec. 44 of the Act, 33 U. S. C. A. 944.

Solution of the question depends upon a construction of sec. 8 (f) of the Act, 33 U. S. C. A. 908 (f), which provides:

"INJURY INCREASING DISABILITY:

- (1) If an employee receive an injury which of itself would only cause permanent partial disability but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall provide compensation only for the disability caused by the subsequent injury; provided, however, that in addition to compensation for such permanent partial disability, and after the ~~cessation~~ of the payments for the prescribed period of weeks, the employee shall be paid the remainder of the compensation that would be due for permanent total disability. Such additional compensation shall be paid out of the special fund established in sec. 944 of this chapter."

Following the only known case on the subject, *National Hospital Association vs Britton*, 147 Fed. (2) 561, the Deputy Commissioner held the plaintiff employer liable for *TOTAL* permanent disability, which is the holding of the majority in that case. With due deference thereto, this Court is unable to follow the interpretation of sec. 8 (f) there adopted by the majority. This Court agrees with, and follows, the dissenting opinion of Judge Groner, which seems to clearly express not only the Congressional intent, but also the right and justice of the situation, without prejudice to the injured employee.

The above mentioned majority opinion concedes that when sec. 8 (f) is read in the usual and ordinary meaning of its words, it indicates clearly enough that in the circumstances here involved, the employer in whose employ the subsequent injury occurred, is liable only for the consequences of that injury, that is, for permanent *PARTIAL* disability. Difficulty arises only when the statutory definitions of "injury" and "disability," appearing in sec. 2, are interpolated into the context of sec. 8 (f) of the Act, where they produce incongruous results.

In the cited case the majority hold that—"Since (the employee's) previous incapacity did not arise out of the course of employment, the statutory phrase (sec. 8-f) has no application to this case." The employer in whose employ the second injury occurred, is held liable for the consequences of *BOTH* injuries, that is, for permanent *TOTAL* disability, though the first injury did not occur in that employer's employment, nor was he in any wise liable therefor.

If the majority opinion in the cited case is carried to its conclusion, it would result that where, as there (and here), an employee suffers an original injury, not in the course of employment, and suffers a second injury in the course of his present employment, that employer would be liable for the consequences of both injuries, and must compensate for total permanent disability, although the first injury had no connection whatever with the present employment. On the other hand, if the injury had been suffered in the course of some previous employment then the employer in whose employ the second injury occurred, would be liable only for permanent *PARTIAL* disability, that is, the consequences of the injury that occurred in the latter employment. This Court sees no intent in the Act to make an employer liable for *TOTAL* disability where a previous injury was not in the course of employment, and yet liable only for partial disability where the previous injury was in the course of employment. Rather does sec. 8 (f) indicate that the employer

should be liable only for the consequences of the injury suffered in his employment, the special fund to bear the remaining burden.

Moreover, the above mentioned interpretations of the Act will adversely affect the interests of partially disabled persons who seek employment. A prudent employer will not employ a person already under partial disability, if, as held by the majority in the cited case, he is liable for total disability caused in part by a previous injury, for which he is not liable, when combined with another injury occurring in his employ which of itself would produce only partial disability, and consequently a smaller liability.

This Court is of the opinion that Congress intended to use the words "injury" and "disability" in sec. 8 (f) in their ordinary sense, which produces a consistent harmonious, and logical result, whereas to interpolate into sec. 8 (f) the defined meaning of those words from sec. 2 leads to an anomaly. The principles of statutory construction applied by the majority in the cited case are abstractly correct, but the rigid application of those principles there made, produces a result which this Court believes is not only contrary to the Congressional intent, but is out of harmony with the remainder of the Act. The Court holds that the employee is entitled to full compensation for permanent *TOTAL* disability, but that this employer is liable only for permanent partial disability. The remainder should be paid from the special fund created by 33 U. S. C. A. 944.

Motion to dismiss denied.

/s/ LOUIE W. STRUM,

Louie W. Strum

U. S. District Judge.

(CAPTION OMITTED)

FILED

Oct 30 1946

JACKSONVILLE, FLA.

Edwin R. Williams, Clerk.

MOTION FOR FINAL JUDGMENT

Suwannee Fruit & Steamship Company and Fidelity & Casualty Company of New York, by their undersigned attorneys, respectfully show to the Court that the order and opinion on the motion to dismiss disposes of all of the real issues in this cause, and that a final judgment should be entered thereon unless the defendant desires to plead further.

Wherefore it is prayed that a final judgment be entered in conformity with the order entered herein on the 11 day of October, A. D. 1946.

/s/ Harry T. Gray

Marks, Marks, Holt, Gray & Yates

Attorneys for Plaintiffs

1321 Graham Building,
Jacksonville, Florida.

(CAPTION OMITTED)

F I L E D

Nov 1 1946

JACKSONVILLE, FLA.

Edwin R. Williams, Clerk.

FINAL JUDGMENT

All affected parties having been heard, after due notice upon the motion of the plaintiffs for final judgment, filed herein October 30, 1946, and the defendant through his counsel having announced that no issues of fact can be raised by filing an answer, and that he does not desire to plead further by answer or otherwise, and the Court being of the view that all questions and issues herein have been disposed of by the order entered October 11, 1946, and by the opinion

of the Court filed herein on October 11, 1946.

IT IS ORDERED AND ADJUDGED:

1. That the allegations in plaintiffs' bill of complaint are true, and that the relief therein prayed for should be granted.

2. That the award of Richard P. Lawson, Deputy Commissioner, Sixth Compensation District, United States Employees' Compensation Commission, made the 31st day of January, 1946, which award modified a prior order or award dated May 14, 1945, be and it hereby is set aside insofar as it requires the plaintiffs or either of them to pay compensation for total permanent disability.

3. That the employee is entitled to compensation for permanent total disability, but that the plaintiffs are liable only for permanent partial disability as provided by 33 U. S. C. A. 908, and that the remainder of such compensation shall be paid from the Special Fund created by 33 U. S. C. A. 944, and it is ordered and adjudged that such compensation be paid from such Special Fund as provided by such law.

4. That said Richard P. Lawson, Deputy Commissioner, Sixth Compensation District, United States Employees' Compensation Commission and John Davis, the employee, be and hereby are permanently enjoined from enforcing from the plaintiffs or either of them, the payment of permanent total disability to the employee.

DONE AND ORDERED at Jacksonville, Florida, this 1st day of November, A. D. 1946.

/s/ LOUIE W. STRUM,

Louie W. Strum,

United States District Judge

(CAPTION OMITTED)

F I L E D

15.

Jan 29 1947

JACKSONVILLE, FLA.

Edwin R. Williams, Clerk.

NOTICE OF APPEAL

TO: Suwannee Fruit and Steamship Company and Fidelity & Casualty Company of New York.

Notice is hereby given that Richard P. Lawson, as Deputy Commissioner, Sixth Compensation District, United States Employees' Compensation Commission, defendant in the above entitled cause, hereby appeals to the United States Circuit Court of Appeals for the Fifth Circuit from the final judgment entered in this action on the first day of November, 1946.

/s/ HERBERT S. PHILLIPS

HERBERT S. PHILLIPS,

United States Attorney.

/s/ EDITH HOUSE

EDITH HOUSE

Asst. United States Attorney.

*Attorneys for Richard P. Lawson, as
Deputy Commissioner, Sixth Compensation District,
United States Employees' Compensation Commission.*

(CAPTION OMITTED)

FILED

Jan 29 1947

JACKSONVILLE, FLA.

Edwin R. Williams, Clerk.

STATEMENT OF POINTS TO BE URGED ON APPEAL.

The points which appellants intend to urge on appeal in this cause are:

1. The District Court erred in denying appellant's motion to dismiss the complaint.

2. The District Court erred in entering final judgment for the appellees granting the relief prayed for in their complaint and permanently enjoining the appellant from enforcing from the appellees, or either of them, the payment of compensation for permanent total disability to the injured employee.

3. The District Court erred in setting aside the appellant's order of January 31, 1946 requiring the appellees to pay to the injured employee compensation for permanent total disability.

4. The District Court erred in ruling that the appellees were liable to the injured employee for permanent partial disability only and that the remainder of the compensation allowed by appellant to the injured employee for permanent total disability should be paid from the Special Fund created by Title 33 U. S. C. A., Section 944.

/s/ HERBERT S. PHILLIPS

Herbert S. Phillips,

United States Attorney

/s/ EDITH HOUSE

Edith House,

Asst. United States Attorney

Attorneys for Appellant.

(CAPTION OMITTED)

FILED

Jan 29 1947

JACKSONVILLE, FLA.

Edwin B. Williams, Clerk.

**DESIGNATION OF CONTENTS OF RECORD
ON APPEAL**

The Clerk of the above District Court, in the preparation of the record on appeal taken in the above captioned cause by the defendant, Richard P. Lawson, as Deputy Commissioner, etc., is requested and directed to include the following:

1. Recite the filing and copy into the record the complaint.
2. Recite the filing and copy into the record the defendant's Motion to Dismiss, except omit the caption thereof.
3. Recite the filing and copy into the record the Court's order entered October 11, 1946 denying defendant's Motion to Dismiss, except omit the caption thereof.
4. Recite the filing and copy into the record the Opinion of the Court filed October 11, 1946, except omit the caption thereof.
5. Recite the filing and copy into the record the plaintiff's Motion for Final Judgment, except omit the caption thereof.
6. Recite the filing and copy into the record the Final Judgment entered November 1, 1946, except omit the caption thereof.
- 6½. Recite and copy Notice of Appeal, omitting caption.
7. Recite the filing and copy into the record the statement of Points to be urged by appellant on appeal, except omit the caption thereof.
8. Recite the filing and copy into the record this Designation of Contents of Record on Appeal, except omit the caption thereof.

/s/Herbert S. Phillips

Herbert S. Phillips,

United States Attorney

/s/Edith House

Edith House,

Asst. United States Attorney

*Attorneys for Richard P. Lawson, as
Deputy Commissioner, etc.*

United States of America,)
) ss
 Southern District of Florida.)

I, EDWIN R. WILLIAMS, Clerk of the United States District Court in and for the Southern District of Florida, and as such the legal custodian of the records and files of said Court, do hereby certify that the foregoing pages numbered from 1 to 21, inclusive, contain a true copy of all such papers and proceedings in the cause of Suwannee Fruit & Steamship Company, a corporation, and Fidelity & Casualty Company of New York, a corporation, vs. Richard P. Lawson, as Deputy Commissioner, Sixth Compensation District, United States Employees' Compensation Commission, as appear upon the records and files of my office that have been directed to be included in said transcript by the agreement of the parties.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court at Jacksonville, Florida, on this the 26th day of February, A. D. 1947.

(Seal)

/s/ EDWIN R. WILLIAMS, Clerk

U. S. District Court,
 Southern District of Florida.

By L. Gibson House, Deputy Clerk.

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of January 27th, 1948:

No. 11928.

RICHARD P. LAWSON, As Deputy Commissioner, Sixth Compensation District, United States Employees' Compensation Commission

versus

SUWANNEE FRUIT & STEAMSHIP COMPANY, ET AL.

On this day this cause was called, and, after argument by Miss Edith House, Assistant United States Attorney, for appellant, and Harry T. Gray, Esq., for appellees, was submitted to the Court.

OPINION OF THE COURT—Filed February 20, 1948

IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE FIFTH CIRCUIT

No. 11928

RICHARD P. LAWSON, AS DEPUTY COMMISSIONER, SIXTH COM-
PENSATION DISTRICT, UNITED STATES EMPLOYEES' COMPEN-
SATION COMMISSION, APPELLANT,

versus

SUWANNEE FRUIT & STEAMSHIP COMPANY, ET AL., APPELLEES

Appeal from the District Court of the United States for the
Southern District of Florida

(February 20, 1948)

Before HUTCHESON, McCORD, AND LEE, Circuit Judges

McCORD, Circuit Judge:

John Davis, through causes unconnected with industry and not attributable to injury by accident, lost the sight in his right eye to such an extent that he became industrially blind in that eye. Later, while in the employ of the Suwannee Fruit and Steamship Company, and through accident sustained in the course of his employment, he lost the sight in his left eye to the extent that he also became industrially blind in that eye. Davis is now permanently and totally disabled, as a result of permanent industrial blindness in both eyes.

The sole question with which we are concerned is whether the employer, Suwannee Fruit and Steamship Company, is liable for compensation to its employee, Davis, for permanent total disability, under provisions of the Longshoremen's and Harbor Workers' Compensation Act, 33 USCA Section 908(a), or whether it is liable only for permanent partial disability, with the remainder of the allowed compensation to be paid out of the special fund created by Section 44 of the Act, 33 USCA 944.

The employer, Suwannee Fruit and Steamship Company, contends that under section 8(f) of the Act, 33 USCA, Section 908(f), it is relieved from liability for permanent total disability, and is only required to provide compensation for permanent partial disability.¹

Appellant Commissioner contends that by virtue of the construction and interpretation placed on Section 8(f) of the Act by the courts, an employee is nevertheless entitled to total permanent disability compensation from an employer in such cases, regardless of any previous disability not sustained through industrial accident; that such construction is in accord with the intent and purpose of the compensation law, and that to hold otherwise would cast upon the special fund created by Section 44 of the Act burdens which it was never intended to bear.

We are of the opinion, and so hold, that appellees are liable to the employee, Davis, for permanent partial disability only, and that the remainder of the compensation allowed for total disability must come from the special fund created by the Act. 33 USCA Section 944.

Section 8(f) of the Act is clear and unambiguous, and therefore needs no construction. When read in its ordinary sense it can have but one meaning. It was clearly intended to restrict the liability of employers to only those employees disabled as a result of accidental injury sustained during their employment. Congress, in passing this section of the Act, intended to relieve industry from compensation for disabilities not caused by it. To give to Section 8(f) of the Act the strained and ingenious construction urged by the Commissioner is but to distort its true sense and meaning.

¹ 33 USCA, Section 908(f), provides:

"Injury increasing disability: (1) If an employee receive an injury which of itself would only cause permanent partial disability but which, combined with a *previous disability*, does in fact cause permanent total disability, the employer shall provide compensation only for the disability caused by the *subsequent injury*. *Provided, however*, That in addition to compensation for such permanent partial disability, and after the cessation of the payments for the prescribed period of weeks, the employee shall be paid the remainder of the compensation that would be due for permanent total disability. Such additional compensation shall be paid out of the special fund established in Section 944 of this chapter."

U. S. v. Ryan, 284 U. S. 167. When we come to use the phrases "previous disability," and "subsequent injury," in Section 8(f), they should be construed in their plain and ordinary sense, and one which produces a consistent and logical result. To interpolate into this section the defined meaning of those terms from Section 2 alone leads to an anomaly. We can give to this section no reasonable construction which would make an employer liable for *total disability* where a previous injury *was not* received in the course of employment, and yet to make him liable only for *partial disability* where the previous injury *was* received in the course of employment. *Lente v. Lucci*, 119 Atl. 132; *Catlett v. Chattanooga Handle Company*, 55 S. W. 2d 257; *Cain v. Staley Mfg. Co.*, 186 N. E. 265; *Lehman v. Shmahl*, 229 N. W. 553; *National Homeopathic Hospital Association v. Briton*, 147 F. 2d 561; see dissent of Chief Justice Groner.

The purpose of this section of the Act is to aid employees who have been partially and permanently disabled through causes unconnected with industrial accident. Certain it is that if industry is penalized by being forced to provide total permanent disability compensation to employees who were already partially and permanently disabled when employed, it would eventually decline to give employment to these handicapped individuals. Therefore, it follows that the construction given to this section by the Commissioner would deny aid to the very ones Congress was seeking to help.

We need only add that we are not concerned with whether the special fund created by Section 44 of the Act will be too quickly depleted by the effect of this and like decisions. We are not empowered to legislate, but only to construe the laws as enacted by the Congress. *Kobilkin v. Pillsbury*, 103 F. 2d 667.

We find no reversible error in the record and the judgment is therefore

Affirmed.

Clerk of the United States Circuit Court
of Appeals for the Fifth Circuit.

A True copy:

Teste:

Judgment

Extract from the Minutes of February 20, 1948

No. 11928

RICHARD P. LAWSON, AS DEPUTY COMMISSIONER, SIXTH COMPENSATION DISTRICT, UNITED STATES EMPLOYEES' COMPENSATION COMMISSION,

versus

SUWANNEE FRUIT & STEAMSHIP COMPANY, ET AL.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

Clerk's Certificate

UNITED STATES OF AMERICA

United States Circuit Court of Appeals, Fifth Circuit

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 20 to 25 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 11928, wherein Richard P. Lawson, as Deputy Commissioner, Sixth Compensation District, United States Employees' Compensation Commission, is appellant, and Suwanee Fruit & Steamship Company, et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 19 are identical with the printed record upon which the said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 17th day of March, A. D., 1948.

(S.) OAKLEY F. DODD,

*Clerk of the United States Circuit Court
of Appeals, Fifth Circuit.*

[SEAL]

Supreme Court of the United States

Order allowing certiorari

Filed June 21, 1948

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.